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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,958	11/05/2003	Nicola Mills Davics	9424	8099

27752 7590 01/11/2005

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

COLE, LAURA C

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/701,958

Applicant(s)

DAVICS ET AL.

Examiner

Laura C Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Examiner notes that reference number "5850603" found on Page 2 Line 24 appears to be a typographical error, and has not been included on PTO-892.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "20" and "21" have both been used to designate the brush head (see Specification Page 2 Line 27 and Page 3 Line 3). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 13 is objected to because of the following informalities:

Claim 13 recites the limitation "said gear" in Line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 7-11 and 14 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 (from which 7 depends) requires that the "viewing surface is *mechanically* coupled to the motor", however Claim 7 requires that the "viewing surface and the motor are *magnetically* coupled." A mechanical coupling is different from a magnetic coupling, as something "mechanical" as defined by *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*, means "Operated or produced by a mechanism or machine".

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-3 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salmon et al., USPN 6,202,242 in view of Coleman et al., USPN 6,183,336.

Salmon et al. disclose the claimed invention including a handle (102) having a motor disposed therein (136), a head having one or more moving bristle holders (106) wherein they are operatively connected to the motor (Column 7 Lines 52-67), a neck disposed between the handle and the head (104), wherein the handle is ergonomically designed on an enlarged portion of the handle for use by children and to encourage them to practice dental hygiene (Column 4 Line 62 to Column 5 Line 3). Also there is a switch that is electrically coupled to the motor and power source (126, see Figure 7). Salmon et al. does not include a handle having a viewing window and a movable viewing surface disposed there beneath, wherein at least a portion of the viewing surface is visible there through the window.

Coleman et al. disclose a device that has a handle designed to amuse a person while eating a candy pop (Column 1 Lines 15-31). The handle includes a viewing window (16; Abstract) and a movable viewing surface (17) disposed beneath, wherein at least a portion of the viewing surface is visible through the window (see Abstract, Figures), and wherein the viewing surface is "mechanically" coupled to the motor (via 13, 44, 44, 56; Column 2 Lines 32-42). The viewing surface has one or two or more images disposed thereon (being the three objects 15 that appear in Figure 1). The viewing surface and the motor are magnetically coupled (as the rotor 44 is magnetically coupled to elements 56 which impart motion to the viewing surface 17, see Column 2 Lines 32-42). The viewing surface is attached to a rotatable "disk" (13). The disk has one or more driven magnets (56, the metallic protrusions act as magnets as they are driven

by magnetomotive force, Column 2 Lines 38-42). One or more driving magnets (64) are disposed on a first gear (42) that is operatively coupled to the motor (44'; see Figure 3) wherein the one or more driving magnets are magnetically coupled to one or more driven magnets (see above, Column 2 Lines 38-42). The switch (11) is electrically coupled to a motor (44') and a power source wherein closing of the switch energizes the motor (Column 2 Lines 13-21, 44-47). The viewing surface "rotates" one revolution for each revolution of a gear (13, Column 2 Lines 32-42). The first gear is operatively connected to a shaft (52). The window is disposed on a large handle portion (see Figure 1).

It would have been obvious for one of ordinary skill in the art to substitute the aesthetically entertaining and ergonomic handle of Salmon et al. for one that has a viewing window and moveable viewing surface that is visible through the window, as Coleman et al. disclose, as an alternative entertaining handle in order to induce and encourage children to brush their teeth and have proper dental hygiene.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp et al., US 2004/0187889 in view of Berger et al., USPN 2,838,976.

Kemp et al. disclose a toothbrush assembly (10) having a handle (16) with a motor disposed therein (Paragraph 57), a head having one or more moving bristle holders are operatively connected to the motor (Paragraph 57; 114), a neck disposed between the handle and head (112), wherein the handle has a viewing window (20; the compartment, Paragraph 24; see Figures), and a movable viewing surface disposed beneath (a toy; 124; see Paragraph 24),

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wherein at least a portion of the surface is visible through the window (see Paragraph 24), and wherein the viewing surface is coupled to the motor for movement (Paragraph 58). The viewing surface has at least one or more images disposed thereon (Paragraph 58). The viewing surface of the toothbrush handle is to encourage children to brush their teeth (Paragraph 20). Kemp et al. does not disclose that the viewing surface is *mechanically* coupled to the motor for *rotational* output.

Berger et al. discloses an animated display device for children that is a container having a viewing window (27) and a movable viewing surface (21) disposed beneath, wherein at least a portion of the viewing surface is visible through the window (See Figure 1), and wherein the viewing surface is mechanically coupled for rotational output (via 25). The viewing surface has more than one image, or is capable of having between two and eight images (see Figures). The viewing surface is attached to a first gear (24).

It would have been obvious for one of ordinary skill in the art to substitute the coupled viewing window and viewing surface device of Kemp et al. for a window and viewing surface device, such as the one that Berger et al. disclose, as a means of providing amusement and encouraging children to brush their teeth and have proper dental hygiene.

#### ***Allowable Subject Matter***

7. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



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8. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art made of record includes an electric toothbrush comprising a handle, head, neck, wherein the handle has a viewing window and movable viewing surface disposed beneath, wherein a portion of the viewing surface is visible through the window, and wherein the viewing surface is mechanically coupled to the motor so that rotational output of the motor causes movement of the viewing surface, and that the viewing surface is attached to a first gear which engages a second gear that is attached to the motor.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

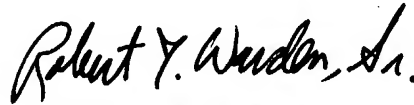
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*LCC*

LCC

07 January 2005



ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700